

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Case No. 21-cr-93 (JRT/TNL)

Plaintiff,

v.

ORDER

Robbin Allen Thomas,

Defendant.

This matter comes before the Court on the Government's Motion to Reschedule Motions Hearing (ECF No. 51), Defendant's Motion to Withdraw Motion to Suppress Statements (ECF No. 52), and the Government's Letter Re: Withdrawal of Motion to Reschedule Motions Hearing (ECF No. 53).

The Defendant filed pretrial motions on September 8, 2021. (ECF Nos. 40-48.) After that date, the Government learned that a material witness on Defendant's Motion to Suppress Statements (ECF No. 48) was unavailable for the October 15, 2021 motions hearing. (ECF No. 51 at 2.) The Government then filed its Motion to Reschedule Motions Hearing on September 10. (ECF No. 51.) In this motion, the Government requested the Court reschedule the motions hearing to "a different day mutually convenient to the parties and the Court." (*Id.*) Further, while the Government noted that Defendant "object[ed] to any further delays" of the motions hearing, certain dates proposed by the Government included dates *before* the October 15, 2021 date. (*Id.*)

Defendant did not file a formal response to the Government's motion. Defendant did, however, file his Motion to Withdraw Motion to Suppress Statements, stating he wished to withdraw the motion to suppress statements (ECF No. 48) which "seeks to have my statements to the police both at the hospital and the following day at the jail suppressed on the grounds that they were not constitutionally voluntary." (ECF No. 52 at 1.)

In response to Defendant's motion to withdraw the motion to suppress, the Government filed a letter withdrawing its motion to reschedule. (ECF No. 53 at 1.) Because the relevant officer is no longer needed at the hearing, the Government provides it "is now prepared to proceed on the remaining suppression motion . . . at the originally scheduled date and time." (*Id.*)

Having anticipated moving the October 15 hearing in response to the Government's motion to reschedule, the Court is now unavailable to preside over a hearing on that date notwithstanding the subsequently filed motion to withdraw the motion to suppress and the withdrawal of the motion to reschedule.

Additionally, beginning on March 13, 2020, and continuing thereafter, the Honorable John R. Tunheim, Chief District Judge for the United States District Court for the District of Minnesota, has issued a series of General Orders in connection with the COVID-19 pandemic, addressing, among other things, criminal proceedings and trials.¹ On September 3, 2021, Chief Judge Tunheim entered General Order No. 30, which allows limited in-person proceedings for defendants who decline to consent to conducting the

¹ All General Orders related to the COVID-19 pandemic may be found on the Court's website at <https://www.mnd.uscourts.gov/coronavirus-covid-19-guidance>.

proceeding using videoconferencing, or telephone conferencing if videoconferencing is not reasonably available. *See generally In re: Updated Guidance to Court Operations Under the Exigent Circumstances Created by COVID-19*, Gen. Order No. 30 (D. Minn. Sep. 3, 2021). General Order No. 30 states that because only limited in-person proceedings may be held each day, criminal proceedings may be continued until the date that the criminal proceeding takes place.

General Order No. 30 continues to encourage the use of videoconferencing in criminal proceedings and states that, with the defendant's consent, criminal proceedings will be conducted by videoconferencing, or telephone conferencing if videoconferencing is not reasonably available.² General Order No. 30 further provides that the presiding judge will enter orders in individual cases to extend deadlines and exclude time under the Speedy Trial Act to address delays attributable to COVID-19.

The Court previously inquired whether Defendant consented to conducting the criminal motions hearing using videoconferencing. (*See* ECF No. 14; ECF No. 28 at 2; ECF No. 34 at 2.) Defendant has indicated through counsel that he does not consent to videoconferencing for the criminal motions hearing. (ECF No. 50.) Consistent with the health and safety protocols of this Court and the facility in which Defendant is detained, the in-person criminal motions hearing will be rescheduled to **October 12, 2021**.

² *See also* General Order No. 29, which went into effect on June 23, 2021, vacated General Order No. 27, and extended the Court's authorization to conduct certain criminal proceedings via video or telephone conference pursuant to the CARES Act "[b]ecause the emergency created by the COVID-19 outbreak continues to materially affect the functioning of court operations in the District of Minnesota." *In re: Updated Guidance to Court Operations Under the Exigent Circumstances Created by COVID-19*, Gen. Order No. 29 (D. Minn. June 17, 2021).

Because this new date is *before* the previously-scheduled October 15, 2021 date, the Court need not exclude additional time pursuant to the Speedy Trial Act. *See* 18 U.S.C. § 3161(h) (dictating that certain “periods of delay” be excluded in the computation of “time within which the trial of any such offense must commence”). That the Court is rescheduling the hearing date on its own motion does not alter this analysis, as there will be no delay of the hearing. *Id.* Therefore, based on all the files, records, and proceedings herein, and noting that there is no opposition to the motion, **IT IS HEREBY ORDERED** that:

1. The Government’s Motion to Reschedule Motions Hearing (ECF No. 51) is **WITHDRAWN**.

2. The Defendant’s Motion to Withdraw Motion to Suppress Statements (ECF No. 52) is **GRANTED**. Defendant’s Motion to Suppress Statements (ECF No. 48) is **WITHDRAWN**.

3. All responses to motions shall be filed by **September 22, 2021**. D. Minn. LR 12.1(c)(2).

4. Any Notice of Intent to Call Witnesses shall be filed by **September 22, 2021**. D. Minn. LR. 12.1(c)(3)(A).

5. Any Responsive Notice of Intent to Call Witnesses shall be filed by **September 27, 2021**. D. Minn. LR 12.1(c)(3)(B).

6. A motions hearing will be held pursuant to Federal Rules of Criminal Procedure 12(c) where:

- a. The government makes timely disclosures and a defendant pleads particularized matters for which an evidentiary hearing is necessary; or
- b. Oral argument is requested by either party in its motion, objection or response pleadings.

7. The criminal motions hearing is rescheduled to **October 12, 2021**, at **1:30 p.m.**, in Courtroom 9W, Diana E. Murphy U.S. Courthouse, 300 South Fourth Street, MINNEAPOLIS, Minnesota. D. Minn. LR 12.1(d).

8. **The trial date, and other related dates, will be rescheduled following the ruling on pretrial motions. Counsel must contact the Courtroom Deputy for Chief District Judge John R. Tunheim to confirm the new trial date.**

Dated: September 20, 2021

s/Tony N. Leung
TONY N. LEUNG
United States Magistrate Judge
District of Minnesota

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